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Date: 5/17/2022 12:44:04 PM  
Subject: Bradford Island FFA Negotiations

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Ann, Jeff, John and Gary,

Thank you for participating in our inaugural negotiation session yesterday for the Bradford Island FFA. I think we made good progress and appreciate everyone's preparation and contributions.

I am confirming that our next virtual negotiation session will be on Tuesday, June 21, from 12:00 to 1:00 PM pacific time. We also discussed that the States would strive to provide a red-lined version of the draft FFA by mid-June and USACE would attempt to do the same by the second week of July.

Consistent with our discussion, I have shared the Ft Eustis FFA with counsel for the Yakama Nation and explained that, while there may be some exceptions, it is used as a general template for similar agreements between EPA and the Department of Defense. Given that, at this time, we are not planning to provide the Yakama Nation with any versions of our draft FFA for Bradford Island, having the Ft Eustis FFA and understanding its significance may allow the Yakama Nation to be better informed and prepared prior to the public comment period for the Bradford Island FFA.

Lastly, I want to follow-up on our discussion about the provisions in the draft FFA pertaining to the participation by non-parties in the review of technical documents during the course of the Bradford Island work. Within the Community Relations provisions of Section XXXIV, paragraph 34.6 contemplates the existence of a *Technical Review Committee* made up of the parties and interested non-parties. 10 USC 2705(c), which pertains to environmental restoration activities conducted by the Department of Defense, is cited as a basis for this paragraph. As I understand Ann's explanation, USACE as a civil works program is not subject to the cited law. To nonetheless maintain the concept of a technical review committee as part of the FFA, with a main emphasis on including the Yakama Nation who has expressed an interest having an opportunity to review and comment on technical documents prepared under the FFA, I am suggesting that we consider relying on Section 120(f) of CERCLA, 42 U.S.C. § 9620(f), which states as follows:

## **f)State and local participation**

The [Administrator](#) and each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and selection of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans. In the case of State officials, the opportunity to participate shall be provided in accordance with [section 9621 of this title](#).

Thank you,

Richard

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